IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 482 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI MADHUBHAI PATEL

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 482 of 1994
MR JB PARDIWALA for Petitioner No. 1
MR HH PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1s. The appellant in this appeal has challenged his conviction u/S. 302 of the Indian Penal Code (for short 'IPC') recorded by the Ld. Addl. Sessions Judge, Bulsar at Navsari vide judgment dated 31/3/1994 in Sessions Case No. 132 of 1991 and the resultant order of sentence of imprisonment for life.

2. The case of prosecution in nutshell can be stated as under :-

2.1. Deceased Sumiben Natubhai lived in locality known as Mograwadi, near Bhut Bungalow in Bulsar with her family which comprised her husband and three children. She had developed illicit intimacy with the appellant 2 to 3 years prior to the date of incident. As a result of that intimacy, the appellant often visited her place. On one of such visits which took place on 22/8/1991 at about 9.00 p.m. the appellant demanded liquor from the deceased. Acceding to his request, the deceased gave him a glass full of liquor. After consuming the liquor, the appellant demanded a sum of Rs.30/- from her. Deceased, however, refused to give that amount. This enraged the appellant and he picked up a kerosene lamp which was lying in the room and sprinkled some kerosene over the body of the deceased. He thereafter forcibly snatched match box from the deceased and threw a lighted match stick on her. As a result of this, clothes of the deceased caught fire and they started burning. The appellant tried to extinguish the fire and in the process he received burns on his hands. The deceased ultimately managed to put out the fire, but in the meanwhile she had already received burns on the face, neck and on her both hands.

2.2. Her neighbours Jagrupbhai and Bhimsingbhai came there and removed her to the Municipality Hospital and from there to the Civil Hospital. It appears that even the appellant was with them. Initially in the Municipality Hospital Dr. Dharatiben Dayabhai Bhagat was present as Medical Officer and at about 10.45 p.m. she gave primary treatment to the deceased and thereafter referred the patient to the Civil Hospital, Bulsar . At the Municipal Hospital the deceased upon being questioned about the history of the incident, replied that she had received burns. She did not say anything else. This fact was conveyed to the police by Dr. Dharatiben at City Police Station, Bulsar by telephone. That was done around 9.50 p.m. At the Bulsar Civil Hospital, the

deceased was admitted by Jagrup as well as Bhimsing and thereafter they left the place. P.I. Virapsha Boramsha Chinoy, who was on patrolling duty in the city of Bulsar, received message from the Police Station Officer, Bulsar City Police Station informing him that the P.S.O. had received information from the Bulsar Municipal Hospital regarding the deceased having received burn injuries and she was transferred to Civil Hospital from Municipal Hospital. P.I. Mr. Chinoy therefore, went to the Civil Hospital and interrogated the deceased. The deceased gave her complaint to the P.I. which was duly recorded by him and he obtained her thumb impression on the said complaint. The complaint was thereafter forwarded to the police station for getting the offence registered against the appellant. The P.I. thereafter wrote a Yadi to the Mamlatdar to record the dying declaration of the deceased.

2.3. The appellant who had also received burn injuries was admitted in the Civil Hospital at Bulsar for treatment. The P.I. therefore, visited him for interrogation. Since the P.I. found that the appellant had consumed alcohol, he registered offence of prohibition against him. He also wrote necessary Yadi for securing treatment for the appellant.

2.4. At the hospital, the Mamlatdar arrived and recorded the dying declaration of the deceased. The deceased received the treatment and thereafter she lived for about one month. Unfortunately at a later stage, for want of proper and adequate medical treatment as well as enough quantity of blood to be transfused, she developed septic condition in the body and ultimately on 17/9/1991 she died of septicemia. With the death of the deceased, necessary alterations were made in the complaint against the appellant and offence u/S. 302 of the IPC came to be added.

3. During the course of investigation, the Investigating Officer arrested the appellant, got panchnamas of the inquest as well as scene of offence and other panchnamas relevant for the purpose of investigation drawn, sent the body for autopsy and upon receipt of the report of autopsy, placed the same in the papers of investigation. Upon completion of the investigation, the P.I. submitted chargesheet in the Court of the Ld. Judicial Magistrate First Class at Bulsar, who in turn committed the case to the Court of Sessions at Navsari as offence u/S. 302 of the IPC is exclusively triable by the Court of Sessions.

4. At the trial, the Ld. Addl. Sessions Judge, Bulsar at Navsari, framed charge against the appellant at Exh. 1 on 6/2/1993 for offence u/S. 302 of the IPC and explained the contents thereof to him. The appellant denied the charge and claimed to be tried.

4.1. During the course of the trial, the prosecution examined 13 witnesses and also placed reliance on certain documentary evidence to support its case. At the end of the recording of the oral evidence, the appellant u/S. 313 of the Code of Criminal Procedure (for short 'Cr.P.C.') was put all the incriminating circumstances appearing against him in the evidence with a view to enable him to render his explanation, if he so desired. It, however, appears that his defence was that of general denial, except for the fact that in answer to the last question, he has stated that on the night of the incident he was at the house of the deceased and children of the deceased were not there and it was the husband of the deceased who set her ablaze on account of her bootlegging activity.

4.2. At the end of the trial, the Ld. trial Judge came to the conclusion that the prosecution had been able to prove that the deceased had died homicidal death and further that the appellant had caused death of the deceased on 22/8/1991 by pouring kerosene over her and then igniting her with a burning match stick. The Ld. trial Judge, therefore, found that the appellant had committed an offence made punishable u/S. 302 of the IPC and, therefore, vide aforesaid judgment he convicted the appellant for committing offence u/S. 302 of the IPC and sentenced him to suffer imprisonment for life. Hence this appeal.

5. At the hearing of this appeal Mr. J.B. Pardiwala, learned counsel for the appellant submitted before us that the Ld. trial judge had committed serious error in convicting the appellant u/S. 302 of the IPC in as much as the prosecution had not proved its case beyond reasonable doubt. He further submitted that looking to the evidence on record and that too the medical evidence, it becomes very clear that the nature of injuries sustained by the deceased was such that no death would have resulted due to the same and there was no direct nexus between the injuries suffered by the deceased and her death. He further submitted that considering the medical evidence it is not difficult to draw inference that the deceased had died due to septicemia which she had developed for want of proper treatment and inadequate blood supply. He lastly submitted that considering the

facts and circumstances on record of the case, it clearly emerges that the offence would fall u/S. 304 Part-II of the IPC and appellant's conviction u/S. 302 of IPC is erroneous.

5.1. As against that Mr. H.H. Patel, Ld. APP for the respondent - State has submitted that looking to the record of this case, it is very clear that there was sufficient evidence to show that the appellant had not committed any other offence, but one u/S. 302 of the IPC. He has further contended that looking to tthe nature of the act, appellant's case is also covered under clause (4) of Section 300 of IPC and, therefore, his conviction under that section is proper and legal and no interference at the hands of this Court is required. He further submitted that this appeal does not have any merit and it deserves to be dismissed.

5.2. At the hearing of this appeal, we have been taken through the entire record of the case by the learned counsels. We have also carefully gone through the oral as well as documentary evidence with a view to reappreciate the same.

6. The question that would first arise for our consideration is whether the deceased died a homicidal death. The prosecution has examined two witnesses, namely, Dr. Dharatiben Dahyabhai Bhagat P.W. 10 Exh. 32 and Dr. Jashvantbhai Magandas P.W. 6 Exh. 17. Dr. Dharatiben Dahyabhai has stated that the patient was brought to her at about 10.45 p.m. on 22/8/1991 and after giving her initial treatment she was removed to the Civil Hospital at Bulsar. She has stated in her evidence that when the patient was brought to the hospital, she was in conscious condition and had remained as such till she was shifted to Civil Hospital at Bulsar. According to this witness, the deceased had not given any history as to how these injuries came to be received by her. She has further stated that the injuries received by the patient were of such a nature that if adequate and proper treatment had been given to her, she would not have died.

6.1. The other witness, namely Dr. Jashvantbhai Magandas who at the relevant time was attached to the Civil Hospital at Bulsar and he had examined deceased as well as the appellant for giving treatment. He had noticed on examination that the deceased had sustained as many as five injuries. He has stated that he had given treatment to her and also to the appellant. In the cross-examination by the defence, he has stated that only those injuries which had remained without healing were

muscle deep. He has further stated that considering the injuries and condition of the clothes of the deceased, it could be said that the deceased had received burns to the extent of 36%. He has also stated that the deceased was having anemic condition for want of proper diet and her weight was very less. He has further stated that after she was admitted to the hospital, except her young child no one else bothered to take care of her. The witness has further stated that in a burn case, in the event of development of shock, patient would require about 4 to 5 bottles of blood for being transfused. The witness has stated that in this case though the hospital authorities could manage to get one bottle of blood, rest of the bottles could not be made available because even in such cases no blood is being supplied by the Civil Hospital authorities to the patient and it is only for the relatives of the patient to manage for the same. He has further stated that since no one was looking after her, requisite quantity of blood could not be procured. According to this witness, Sumiben had survived for 27 days and during that period she had not vomited nor she had any fit of epilepsy. However, on 10th September, 1991 she had started getting delirious and showing the symptoms of septicemia. He has further stated that so far Sumiben was concerned, she was accustomed to consume liquor to such an extent that she had already become alcoholic and when such patients are deprived of the alcohol, they receive more infection in the blood than normally received by other patients. This witness has further stated that in this case the growth of bacteria in blood had increased and to arrest the growth of bacteria, antibiotic medicines were required to be given to the patient. However, no medicine was made available to the doctor for the treatment of Sumiben and as a result thereof she died. In the opinion of the doctor, many other forces had contributed in the development of shock and septicemia in the patient and the patient had died due to septicemia shock.

6.2. Considering the overall effect of the evidence of prosecution witnesses Dr. Dharatiben Dahyabhai Bhagat and Dr. Jashvantbhai Patel, it clearly appears that the injuries actually suffered by Sumiben were not fatal in nature. In the opinion of Dr. Dharatiben, if patient like Sumiben would receive adequate treatment, the life of the patient would be completely out of danger. Similarly Dr. Jashvantbhai has also stated that in his view the injuries suffered by Sumiben were not fatal. It is also seen from the evidence of this witness that had Sumiben been given adequate dose of medicine and the required quantity of blood, in all probabilities she

would have survived. It is rather unfortunate that the helpless poor lady had to lose her life for want of adequate treatment even at a place like Civil Hospital at Bulsar. It speaks volumes about the poor administration of the hospital. Not only that, it clearly shows the callous and indifferent attitude of hospital authorities towards poor patients. However, considering the evidence from the angle of determining the question as to whether the appellant intended to cause fatal injuries to the deceased, it can safely be said that the evidence suggests otherwise. Moreover, neither of the Medical officers has even remotely suggested that the injuries suffered by Sumiben were sufficient in ordinary course of nature to cause death. Undoubtedly Sumiben has died due to septicemia which set in only as result of the injuries caused to her by the appellant and hence we have no hesitation in holding that she had died homicidal death.

7. So far the involvement of appellant in this offence is concerned, there is ample evidence on record to prove the same. The prosecution has examined son of the deceased - Dipakbhai Natubhai, aged 15 years at the time of his deposition, as prosecution witness no. 11 at Exh. 33. The Ld. trial Judge has first ascertained by putting several questions to him whether the witness was competent enough to take oath and on being satisfied about his competence, the Ld. trial Judge has administered oath to him and has recorded his evidence. The witness has in no uncertain term stated in his evidence that on the night of the incident, he and his sister were studying. At that time appellant came there. As the father of the witness was ill, he was sleeping. He has further stated that the appellant demanded liquor from the deceased, which was given to him by her mother. After consuming the liquor, he demanded Rs.30/- from his mother, which she refused to give and, therefore, appellant sprinkled kerosene from the lamp on his mother and ignited a match stick and set her ablaze. He has also stated that the appellant made attempt to extinguish the fire and the witness and his sister took their mother in the bath room and poured water over her. One Madrasi standing outside their house had shouted and, therefore, people gathered there. The witness has thereafter said about his mother being removed to the hospital, etc. He has also stated that since his father was not keeping good health for the last two years, his mother was carrying on bootlegging activity to maintain the family. This witness has been extensively cross-examined by the defence, but no material which could discredit his evidence has been brought out by the defence. There is no reason for us not to accept the evidence of this

witness. He is aged 15 years and he is studying in the school. Therefore, it can safely be inferred that he has developed enough understanding to know what was happening around him. It was 9.00 O'cklock at night when the incident took place and it is very obvious that at such hour a boy aged 15 years would be in his house. His presence is, therefore, natural at the scene of offence. Since the appellant was often visiting his mother, there is no question of any mistaken identity. He has no reason to falsely involve the appellant in the incident. On the contrary, he would be anxious enough to see that the real culprit is punished. In light of these circumstances, inspite of the fact that he being child witness, we have no hesitation in accepting his evidence. Nonetheless when it is time and again said by the Apex Court and different High Courts that the Court should seek corroboration before relying on the evidence of child witness, we may as well discuss what corroboration is available in this case.

7.1. The prosecution has examined two other witnesses Jagrup Nandlal P.W. 4 Exh. 14 and Bhupsinh Nanosing P.W. 5 Exh. 15. These witnesses were at the scene of offence immediately after the incident was over and they have played some role in removing the deceased to the hospital for treatment. It appears that the appellant was also with them. However, they have not wholly supported the prosecution and one of them, namely Jagrup has even been declared hostile. So far the other witness Bhupsinh Nanosing is concerned, though he narrates the incident, he says that he was not able to identify the person who had committed the offence. Therefore, evidence of these witnesses lend support to Dipak's version to a limited extent only i.e. the deceased on that night received burns and that too in her own house. However, witness Dipak Natubhai gets complete corroboration from the case papers of the Civil Hospital pertaining to the treatment of Sumiben wherein history has been recorded by the concerned Medical Officer upon the information given by Sumiben. Exh. 18 is the medical certificate issued by the Resident Medical Officer, Civil Hospital, Bulsar to certify the death of Sumiben. It is dated 21st September, 1991. In the said certificate it has been stated that the patient was burnt by Dilip Madhubhai Patel at about 9.30 p.m. in her own house on 22nd August, 1991. This fact is also supported on all details by very important piece of evidence viz. the dying declaration of Bai Sumi. The same is at Exh. 25. In that declaration deceased has narrated the same complete facts regarding the incident and she has in no uncertain terms held the appellant responsible for

bringing about her critical condition. Over and above this, there are two other factors which can be taken into consideration to hold the appellant responsible for the crime and they are - (1) that the appellant himself had received burns on hands while he was trying to extinguish the fire and (2) the false statement made by the appellant in his defence u/S. 313 of the Cr.P.C. to the effect that he was present in the house of the deceased at the time of incident took place. According to the appellant, it was the husband of the deceased who had set her on fire because of some dispute regarding bootlegging activity carried on by the deceased. There is no manner of doubt that this story has been cooked up by the appellant with a view to shield himself from the responsibility of committing the crime. There is nothing on record to suggest, even remotely, that it was the husband of the deceased who had committed this crime. On the contrary, there is positive evidence on record to show that the husband of the deceased was ill for the last two years and at that very moment he was sleeping in another room. He is not even an eye witness to this incident, leave apart being the author of the crime. In these circumstances, it can be safely held that it was the appellant who had committed this crime and none else.

8. The question now to be decided is what offence the appellant has committed. As already discussed above, the medical evidence on record does not say that the injuries were sufficient in ordinary course of nature to cause death. Not only that but there is positive evidence to the effect that the injuries were not fatal. It is also on record that the patient had no means to purchase necessary medicine for her treatment nor did her relatives care to make any arrangement for the same. Over and above this, the deceased badly needed blood which unfortunately was not available to her and despite the fact that with such treatment the lady in all circumstances would have survived had to die. It is, therefore, very doubtful whether the appellant intended to cause such injuries which were sufficient in ordinary course of nature to cause death. It is true that the intention can be inferred from the act committed by the accused, but in this case the evidence shows that not only the injuries were not fatal, but appellant had even made serious effort to put out the fire. If he had entertained an intention to cause death of this lady, he would not have made such effort. It is pertinent to note that appellant had received burns on both the hands, on the palm, fingers and wrist and he was admitted as an indoor patient on 23/8/1991 and he remained in hospital till 16/9/1991. Dr. Jashvantbhai Patel has clearly

stated that since appellant had suffered deep burns, he required long duration of hospitalization. It is also on record and we have no reason to doubt the same that the appellant had received burns while he was in the process of putting out the fire. This fact is stated by Dipak as well the deceased herself. This factor would go long way to show that the appellant had no intention to kill the deceased. Had there been any such intention on his part, he would not have made such serious effort to rescuing her. Thus, considering the nature of injuries and also the fact that appellant himself had made serious efforts to save the life of the deceased, we are of the opinion that he had no intention to cause the death of the deceased. Of-course act of sprinkling kerosene over some body and then set that person on fire is a very serious act. At the same time, considering the facts of this case, it is difficult for us to even infer or presume, leave apart drawing any definite conclusion, that the appellant knew that his act was so imminently dangerous that in all probability it would cause death or such bodily injury which was likely to cause death of the victim. Though his act can be termed as reckless, it cannot be equated with extremely reckless act.

At this juncture we may refer to important contention raised by the Ld. A.G.P. Mr. H.H. Patel that looking to the fact that the appellant had sprinkled kerosene over the deceased and had set fire to her clothes by igniting the match stick, it clearly shows that his act was such which would fall within the mischief of clause (4) of section 300 of the IPC. In support of this contention he has also placed heavy reliance on a decision of this Court rendered in the case of State of Gujarat v/s. Maniben w/o Gandu Jadav reported in 2001 (2) G.L.R. p. 1749. We have carefully gone through this decision with a view to appreciate the contention raised by Mr. Patel. On reading the facts of that case, it would be apparent that there are several distinguishing features between the facts of that case and the facts of the case on hand. In the case cited by Mr. Patel the respondent accused of that case, with premeditated intention of setting the deceased on fire, had come with full preparation to accomplish her gruesome act and when the deceased was returning in the morning of November 29, 1984 at about 7.00 O'clock, after fetching water, she, with the burning wick made of rags ignited and set ablaze the terylene clothes put on by the deceased from all the sides. It may also be kept in mind that at that time the deceased was carrying a pot filled with water and she was also carrying her minor child in hands. Thus she was at that time totally in helpless

condition and taking the disadvantage of her helpless condition the respondent of that case had set her terylene clothes ablaze from all the sides. The respondent thereafter did not take any step to give any aid to the victim either to extinguish the fire or to secure medical assistance after she received the burn injuries. In the present case the facts are quite different. It is an admitted fact that when the appellant came to the house of deceased, he had come with an intention to consume liquor and also to have some money from the deceased. It is also an admitted fact that both the appellant as well as the deceased, were having illicit relations for about 2 to 3 years prior to the present incident and the appellant off and on visited the house of the deceased on account of the relations between them. It is also an admitted fact that the deceased gave a glass full of liquor to the appellant which he consumed till the last drop. He thereafter demanded Rs.30/- from the deceased which she declined to give and the entire trouble started from here. The refusal to give money appears to have resulted into some hot exchange of words between them and thereafter in a fit of anger the appellant picked up the kerosene lamp lying in the kitchen and sprinkled whatever kerosene that was there in the lamp on the clothes of the deceased and he ignited a match stick and threw it on the deceased. As a result of this, clothes of the deceased caught fire. It is also an admitted fact that immediately thereafter the appellant on realising the danger, made all sincere efforts to put out the fire and in the process he also received serious deep burns on both of the hands. Moreover, if the cases are compared on the basis of medical evidence, there are sufficient distinguishing features between them. In the case cited by Mr. Patel, the deceased had received serious burns to the extent of 50% and the lady had died on the 8th day of her receiving the burn injuries. Further though in the opinion of the Medical Officers of that case cited by Mr. Patel the injuries received by the deceased were not sufficient in ordinary course of nature to cause death, there was sufficient evidence to prove that the deceased had died because of very injuries and that too despite having received adequate medical treatment. In the instant case, the injuries received by the deceased were not of serious nature. It can be seen from the evidence of the Medical Officers examined in this case that the deceased had received on face 5% burns and on the chest on the back side 4% and on the front side 10%. Over and above this, she had also received burns but not of serious nature and that too not on vital parts of the body, but on the hands. There is positive evidence of the medical

experts who have examined the deceased at Municipal Hospital as well as Civil Hospital to the effect that the injuries received by the deceased were not at all of serious nature and she could not have died as a result of these injuries. It is on record that the deceased had lived for a period of one month. It was only on 27th day of her hospitalisation that she had developed septicemia which had aggravated because she had become alcoholic and also because she was very anemic on account of malnutrition. It is in evidence that the septicemia could not be treated by the hospital authorities because there was no one in the family of the deceased who could purchase the requisite medicines for preventing septicemia. It is also in evidence that the lady in that condition required five bottles of blood for transfusion, but she could be transfused only one bottle of blood as the hospital authorities were not inclined to supply the remaining bottles of blood and there was no one in the family of the deceased who could procure the requisite quantity of blood for being transfused to her. In light of this evidence, it is difficult to equate this case with the case cited before us by Mr. Patel.

Considering both these cases from the legal point of view and in particular in light of provisions of clause (4) of section 300, it will not be possible for us to rely on a case cited by Mr. Patel, though we are not disputing the legal proposition enunciated by this Court in that case. In our opinion the present case will not fall within the four corners of clause (4) of section 300 of IPC. Clause (4) to section 300 reads as under :-

"300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

2ndly xxx xxx xxx xxx

3rdly xxx xxx xxx xxx

4thly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

This clause covers class of cases which are very

dangerous in themselves and the act is done with the knowledge that it must in probability cause death or such bodily injury as is likely to cause death and despite such knowledge, the act is done without any excuse. In other words provisions of this clause are required to be attracted only when the offender knows that his act is so imminently dangerous that it would in all probability cause death or atleast such bodily injury which is likely to cause death. Such knowledge on the part of the accused must be of highest degree of probability. It is also a well known fact that the clause 4thly is designed to provide for that class of cases where the acts resulting in death are calculated to put lives of many persons in jeopardy without being aimed at any one in particular and perpetrated with full consciousness of the probable consequence, as can be seen from illustration (d) of section 300 of the IPC. Under clause (4) the degree of probability or likelihood of the act resulting in fatal harm is required to be of highest level. This can be gathered from the clear wording of the clause (4), namely, "If the person committing the act knows that it is so imminently dangerous that it must, in all probability cause death ....." For applicability of this clause following are the necessary requirements :-

(1) the act must be imminently dangerous
(2) the act must be of extraordinary recklessness
(3) the danger to human life must be so imminent, and
(5) the imminence should be such that it will in all probability cause death or cause such bodily injury as is likely to cause death.

The word "imminently" implies a risk which is both threatening and near. The question whether an act is imminently dangerous depends upon nature of the act and its evident risk to human life. The danger threatened must be to human life. It must be an act in which death of human is certain or almost so, and it would cause surprise if the result was otherwise. Moreover, the danger must not only be of certain or almost certain death, but of a death which is near and may be counted by days or may be hours. Thus, it can be seen that unlike the preceding three clauses of section 300 clause (4) revolves round the knowledge of the accused and intention of the accused is of no relevance to attract provisions of this clause.

We may, therefore, at this juncture refer to the provisions of section 299 of the IPC and in particular the last part of that section and examine the said provisions vis-a-vis clause (4) of section as both these

provisions are totally based on the knowledge of the offender of the consequences of his act. Section 299 of the IPC deals with culpable homicide. It reads as under :-

"Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

A comparative table of section 299 and section 300 has been aptly given in the book of Indian Penal Code by Ratanlal & Dhirajlal 28th edition - 1999 on page 364, which is as follows :-

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done	Subject to certain exceptions culpable homicide is murder if the act by which the death is done ....
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

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(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that	it must in all probability cause death or such bodily injury as is likely to cause death and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

This comparative table is quite helpful in appreciating the points of distinction between the two offences viz. offence made punishable u/S. 302 of the IPC and offence made punishable u/S. 304 II of the IPC.

Clause (c) of section 299 and clause (4) of section 300 in the table given above, as can be seen, are put under the head of knowledge. It is further explained by the learned authors as under:-

> "Clause (c) of section 299 and clause (4) of section 300 both require knowledge of the probability of the act causing death."

From aforesaid discussion It will be sufficient to say that normally clause (4) of section 300 would be applicable where the knowledge of the offender as to the probability of death of a person in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of such offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid. In a given case this clause can be made applicable to a case wherein the offending act is done against a particular person. As against that the case would fall in the category of "culpable homicide not amounting to murder" if all the ingredients of clause (4) of section 300 of the IPC are absent and where evidence establishes that the act by which the death is caused is done with the knowledge that the act is likely to cause death. Thus it can be seen that the knowledge of the offender is closely connected with the probable result of his act. The probability in

the two cases relates to the causing of death, but in one case it is comparatively not so strong as in the other. Similarly the act is in the two cases dangerous, but if it is imminently dangerous, it is prima facie murder and not merely culpable homicide.

Reverting back to the facts of this case, it can be stated that the appellant at the time he arrived at the house of the deceased, had come there only with the intention of consuming liquor and to have some monetary aid from the deceased. After consuming liquor he demanded money from the deceased, which was not given to him, which ultimately led to happening of this incident. The fact that he was in intoxicated condition cannot be of any significance because he himself was responsible for getting intoxicated. Section 86 of the IPC clearly states that when the person commits act in the state of intoxication, he shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will. It is, however, there in the evidence that the appellant was almost addicted to alcohol so much that he off and on came to the house of the deceased for consuming liquor. One cannot ignore the fact that a prolonged excessive use of alcohol by a person increases the probability of violent behaviour (Law of Crimes and Criminology by R.P. Kathuria edition 2000 Vo.I page 622). Apart from this even from the facts on record of this case, it is very clear that upon refusal by the deceased to give money the appellant picked up the kerosene lamp lying nearby and sprinkled some kerosene over the clothes of the deceased and ignited them with a burning match stick. This was done simply in a fit of anger. Unlike the case cited by Mr. Patel the act of the appellant was not as a result of any calculated evil design or as a move to achieve the sinister purpose. Immediately on seeing the clothes having caught fire the appellant had made all the sincere efforts to prevent the deceased receiving serious burns and in all probability it appears that because of his effort the fire to a great extent was put out and the deceased was prevented from receiving fatal injuries. It can therefore, safely be said that the appellant had not committed the act with full knowledge that his act in all probability would cause death or cause injuries which are likely to cause death of the other person. If that be so, his knowledge of the act committed by him cannot be equated with the element of knowledge that is required to bring the case under clause (4) of section 300 of the IPC. Considering the facts of this case, there is not even scope for

drawing presumption that his act was such so as to attribute knowledge regarding certain death as a result of it to bring his case within four corners of clause (4) of section 300 of the IPC. The knowledge to the appellant can be attributed only to the extent that he might have known that his act was likely to result into the death of the deceased. As we have discussed above, but for the unfortunate circumstances, Sumiben would not have lost her life. Keeping all these aspects in mind, it is very difficult to saddle the appellant with the liability of committing murder of Sumiben. The knowledge of the act committed by the appellant can be inferred only to the extent of bringing his case under Section 299 which is made punishable u/S. 304 Part-II of the IPC. For these reasons we do not agree with the contention raised by Mr. Patel and hence the same is, therefore, not accepted.

9. The net result is that this appeal is partly allowed. Conviction of the appellant u/S. 302 of the IPC is converted into one u/S. 304 Part-II of the IPC. We have been informed by the learned counsel appearing for the appellant that the appellant has remained in jail for more than 11 years and we feel that imposition of sentence of imprisonment already undergone would meet the ends of justice. His sentence of life imprisonment is, therefore, set aside and instead he is sentenced to suffer imprisonment already undergone.

9.1. Since the appellant is sentenced to suffer imprisonment already undergone, the Prison Authorities are directed to set him at liberty forthwith, if not required for any other purpose.

Muddamal articles to be disposed of in terms of the direction given by the Ld. trial Judge in the impugned judgment.

[K.R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.